IN RE: PAULUS H. CHAN

NO. BD-2015-050

S.J.C. Order of Term Suspension/Stayed entered by Justice Spina on November 13, 2015. [1]

Page Down to View Memorandum of Decision

[1] The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
DOCKET NO. BD-2015-050

IN RE: PAULUS H. CHAN

MEMORANDUM OF DECISION

Bar counsel filed a petition for reciprocal discipline against Paulus H. Chan, Esq., the respondent. On September 12, 2014, the Superior Court of New Haven, Connecticut, suspended the respondent for thirty days with certain conditions. On March 5, 2015, the same court found him in contempt of its 2014 suspension order and placed him on an interim suspension. He was reinstated on June 8, 2015. Bar counsel was not notified of the Connecticut discipline until April, 2015, and filed the petition for reciprocal discipline on June 1, 2015.

Supreme Judicial Court Rule 4:01, § 16, states:

> "The court may impose the identical discipline unless (a) imposition of the same discipline would result in grave injustice; (b) the misconduct established does not justify the same discipline in this Commonwealth; or (c) the misconduct established is not adequately sanctioned by the same discipline in this Commonwealth."

The respondent contends that the conduct which was the basis for the Connecticut discipline was a "onetime honest mistake," and that he "has learned a valuable lesson from the incident." He further contends that the order of contempt was largely a result of his sleep apnea condition, and travel to the West coast. [Respondent's Supplemental filing of September 11, 2015] He contends that reciprocal discipline in this case for a single incident that occurred nearly three years ago "would result in grave injustice" under rule 4:01, § 16 (a).

Bar counsel responds that the respondent had three prior reprimands, in 2008, 2009, and 2013, before the discipline imposed in 2014. The 2014 suspension was based on the respondent's

issuance of a check drawn on his IOLTA account to one client that he knew could be paid only with another client's funds. He also failed to cooperate sufficiently with the Connecticut Statewide Grievance Committee's request for information about a check that was returned on his IOLTA account, and he failed to provide Connecticut disciplinary counsel with copies of his general ledger and individual client ledgers pertaining to his IOLTA account. A thirty-day suspension for such conduct is comparable, *Matter of Alter*, 389 Mass. 153, 156 (1983), to sanctions imposed in similar cases. See *Matter of MacCallum*, 24 Mass. Att'y Discipline Rep. 450 (2008) (four-month suspension for intentional use of client funds with no deprivation to client, inadequate maintenance of IOLTA records, and failure to cooperate with bar counsel).

I am satisfied that there was a sanction imposed in Connecticut that corresponds roughly with sanctions imposed in similar cases in Massachusetts. If anything, the Connecticut sanction is on the low side of comparable sanctions. Moreover, the respondent's ethical transgressions are neither trivial nor de minimis.

With respect to the suggestion of a temporary disability due to sleep apnea and absence from the State of Connecticut, the record reflects that notwithstanding this claim, the Connecticut Superior Court did not vacate the order of contempt on those grounds. Rather, the respondent appears to have been reinstated sometime after compliance with the court's order, and in any event by June 8, 2015.

I am somewhat sympathetic to the respondent's claim that he will effectively be sanctioned twice if I order a thirty-day suspension. Such a result is likely to occur when a short-term suspension is ordered in one State and reciprocal discipline follows in another State. In addition, at the hearing before me on September 8, 2015, the respondent indicated he had only two clients in Massachusetts. It is my intention to fashion a sanction that recognizes the significant interest of bar counsel in upholding the ethical standards of the Rules of Professional Conduct, that recognizes the public perception of the integrity of the bar, but that also recognizes the potential brief disruption to the few clients the respondent may have in the Commonwealth.

In consideration of the foregoing, the respondent's license to practice law in Massachusetts is suspended for thirty days. That suspension is suspended for sixty days, on condition that the respondent shall not violate any professional legal standards or rules of professional responsibility during said sixty-day period. The respondent must file an affidavit after the conclusion of said sixty-day period with the Office of Bar Counsel and with the Supreme Judicial Court Clerk for Suffolk County attesting to his compliance with this probationary condition, and, with the assent of the Office of Bar Counsel, file a request that the court issue an order that he is no longer subject to the term suspension.

Francis X. Spina
Associate Justice

ENTERED: November 12, 2015

A True Copy
Attest
11-18-15
Date
Assistant Clerk